Filed 12/21/20 In re A.C. CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re A.C. et al., Persons Coming Under the Juvenile Court Law.	C091484
SACRAMENTO COUNTY DEPARTMENT OF CHILD, FAMILY AND ADULT SERVICES, Plaintiff and Respondent, v. L.C., Defendant and Appellant.	(Super. Ct. Nos. JD238670, JD238671, JD238672, JD238673, JD238674)

L.C., mother of the five minors (mother), appeals from the juvenile court's order terminating her parental rights and freeing the minors for adoption. (Welf. & Inst. Code, §§ 366.26, 395.)[1] She contends the juvenile court and the Sacramento County

[1] Further unspecified statutory references are to the Welfare and Institutions Code.

Department of Child, Family, and Adult Services (Department) failed to comply with the requirements of the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.). The Department concedes the error. We will reverse and remand for limited ICWA proceedings and will otherwise affirm the juvenile court's orders.

I. BACKGROUND

A detailed recitation of the facts and non-ICWA related procedural history is unnecessary to our resolution of this appeal.

The case involves five minors, A1, A2, C., D1, and D2 (ranging in age from 4 to 11). L.J. (deceased) is the presumed father of A2. F.C. is the presumed father of the other four minors.

On December 14, 2017, the Department filed dependency petitions on behalf of each of the five minors pursuant to section 300, subdivision (b).

Mother initially reported there may be Native American heritage on her side of the family and that she may be a member of, or eligible for membership in, the Cherokee Tribes. She later informed the Department that the maternal great-grandparents had Cherokee ancestry and she provided "all the information available to her regarding Native American ancestry."

F.C. filed a parental notification of Indian status stating he had no known Indian ancestry. The juvenile court found there was no evidence that the minors were Indian children within the meaning of ICWA as to F.C. Upon further investigation, however, the Department learned that the paternal great-grandparents (F.C.'s grandparents) had Indian ancestry through the Pascua Yaqui Tribe.

On January 4, 2018, the Department sent ICWA notices to the Bureau of Indian Affairs (BIA) and the tribes named by mother and F.C., including the Cherokee Nation of Oklahoma, the Eastern Band of Cherokee Indians, the United Keetoowah Band of Cherokee Indians in Oklahoma, and the Pascua Yaqui Tribe. The notices included information regarding mother, F.C., the maternal and paternal grandparents, and the

maternal and paternal great-grandparents. However, other than names and, in some cases, addresses, partial or full birthdates, and potential tribes, the information for the grandparents and great-grandparents provided no identifying information.

On January 18, 2018, the Pascua Yaqui Tribe responded to the ICWA notice stating the minors were not eligible for membership in the Tribe. On January 23, 2018, the Eastern Band of Cherokee Indians responded that none of the minors were registered or eligible to register as a member of the tribe.

On March 12, 2018, the Department filed amended petitions on behalf of the minors with additional allegations pursuant to section 300, subdivision (b).

The parents waived their rights and submitted to the allegations in the amended petitions. The court sustained most but not all of the amended allegations, declared the minors dependents of the juvenile court, and continued the minors in out-of-home placement. On July 30, 2018, the court ordered the minors placed with the maternal grandparents.

On July 14, 2018, mother gave birth to another child, S. Thereafter, the Department filed a dependency petition on behalf of S. pursuant to section 300, subdivisions (b) and (j).

At the pre-trial hearing on April 10, 2019, the court found the ICWA did not apply as to all of the minors. The court also sustained the petition as to S. and ordered he be placed with the paternal aunt under the Department's supervision.

On April 15, 2019, the court ordered six more months of reunification services for the parents.

The July 2019 permanency review report recommended the court terminate the parents' reunification services and set the matter for a section 366.26 hearing. The December 2019 selection and implementation report recommended termination of parental rights with a permanent plan of adoption.

At the section 366.26 hearing on January 6, 2020, the court denied mother's section 388 petition requesting return of the minors to her custody. The court terminated parental rights, finding the minors were specifically adoptable and likely to be adopted, and the beneficial parental relationship exception to adoption did not apply.

II. DISCUSSION

Mother contends the Department failed to comply with the ICWA requirements by failing to inquire of all known maternal and paternal relatives about possible Indian heritage, to include known or reasonably ascertainable information about those relatives in the ICWA notices, or to include in its reports a discussion of all efforts undertaken to satisfy the ICWA inquiry and notice requirements. She further contends the juvenile court erred in finding the ICWA did not apply without first ensuring proper compliance with the ICWA inquiry and notification requirements. The Department concedes the errors. We will accept the Department's concession and reverse and remand for further limited proceedings.

ICWA's purpose is to protect the interests of Indian children and promote the stability and security of Indian tribes by establishing minimum standards for, and permitting tribal participation in, dependency actions. (25 U.S.C. §§ 1901, 1902, 1903(1), 1911(c), 1912; *In re Isaiah W.* (2016) 1 Cal.5th 1, 7-8.) The juvenile court and the Department have "an affirmative and continuing duty to inquire" whether a child is, or may be, an Indian child. (§ 224.2, subd. (a); Cal. Rules of Court, rule 5.481(a); see *In re K.M.* (2009) 172 Cal.App.4th 115, 118-119.) If, after the petition is filed, the juvenile court knows or has reason to know that an Indian child is involved (25 U.S.C. § 1912(a)), notice of the pending proceeding and the right to intervene must be sent to the tribe or the BIA if the tribal affiliation is not known. (See § 224.2, subds. (d) & (f); § 224.3, subds. (a)-(g); Cal. Rules of Court, rule 5.481(b); *In re Robert A.* (2007) 147 Cal.App.4th 982, 989.) "At that point, the social worker is required, as soon as practicable, to interview the child's parents, extended family members, the Indian

custodian, if any, and any other person who can reasonably be expected to have information concerning the child's membership status or eligibility." (*In re Michael V.* (2016) 3 Cal.App.5th 225, 233; see Cal. Rules of Court, rule 5.481(a)(4)(A); § 224.2, subd. (b).)

ICWA notices must include all the following information, if known: the child's name, birthplace, and birth date; the name of the tribe in which the child is enrolled or may be eligible for enrollment; names and addresses of the child's parents, grandparents, great-grandparents, and other identifying information; and a copy of the dependency petition. (§ 224.3, subd. (a)(5)(A)-(D); *In re Mary G.* (2007) 151 Cal.App.4th 184, 209.)

Mother claims, and the Department concedes, that the Department failed to seek information from the maternal grandparents, who were accessible to the Department and with whom the minors were ultimately placed, or from any of the paternal relatives. As a result, the notices lacked information that was accessible to and obtainable by the Department. We agree. The Department's duty of ICWA inquiry extends to the minor's extended family, if known. (§ 224.2, subd. (b); Cal. Rules of Court, rule 5.481(a)(4).) Here, information regarding the minors' extended family was known. While mother failed to fill out the family tree questionnaire, she did inform the Department of the names of the maternal great-grandparents. However, we see nothing in the record that demonstrates there was any effort to contact or obtain information from the maternal grandparents or any of F.C.'s relatives. In fact, the Department's declaration of ICWA investigation indicated mother and F.C. were the only persons contacted regarding possible Indian heritage. Further, the Department had numerous contacts with the maternal grandparents, with whom the minors were placed, and the maternal grandfather was present in court on at least one occasion. Yet, the Department failed to obtain, at a minimum, the full birth dates for the maternal grandparents or any identifying information for the maternal great-grandparents other than their names. The Department cannot fulfill its continuing duty of inquiry and notice by omitting known information,

"[n]or can the juvenile court assume that because *some* information was obtained and relayed to the relevant tribes, the social services agency necessarily complied fully with its obligations." (*In re K.R.* (2018) 20 Cal.App.5th 701, 709.) The Department failed its duty of inquiry. Therefore, the notices sent by the Department were insufficient for purposes of the ICWA.

"[E]rrors in an ICWA notice are subject to review under a harmless error analysis." (*In re Brandon T.* (2008) 164 Cal.App.4th 1400, 1415.) Error is not presumed. It is mother's obligation to present a record that affirmatively demonstrates error. (*In re D.W.* (2011) 193 Cal.App.4th 413, 417-418.) Mother has done so here. If we conclude the juvenile court did not comply with the ICWA provisions, we "reverse only if the error is prejudicial." (*In re A.L.* (2015) 243 Cal.App.4th 628, 639.) In light of the Department's concession, and given the state of the record, we cannot say with certainty that the notices were legally sufficient or that there was no prejudice to the relevant tribes.

The Department either did not take sufficient affirmative steps to investigate the minor's possible Indian ancestry or did not document its efforts to do so, and the juvenile court failed to ensure that an adequate investigation had been conducted. In the absence of evidence of the Department's efforts to fulfill its continuing duty of inquiry, we cannot say the failure of ICWA compliance was harmless. A failure to conduct a proper ICWA inquiry requires reversal of the orders terminating parental rights and a limited remand for proper inquiry and any required notice. (*In re A.B.* (2008) 164 Cal.App.4th 832, 839; *In re D.T.* (2003) 113 Cal.App.4th 1449, 1454-1456.) We must therefore remand for limited proceedings to determine the ICWA compliance.

III. DISPOSITION

The juvenile court's order terminating parental rights is conditionally reversed. The matter is remanded to the juvenile court for limited proceedings to determine the ICWA compliance. If, at the conclusion of those proceedings, no tribe indicates the

minor is an Indian child within the meaning of the ICWA, then the juvenile court shall reinstate the order terminating parental rights. In all other respects, the judgment is affirmed.

/S/

RENNER, J.

We concur:

/S/

RAYE, P. J.

/S/

KRAUSE, J.